

REMARKS

The present amendment is submitted in response to the Final Office Action mailed November 16, 2005 and concurrently with the filing of a Request for Continued Examination (RCE). It is believed that no new matter or issues are introduced by this amendment. In view of the remarks to follow, reconsideration and allowance of this application are respectfully requested.

Claims 1-10 and 12-22 were rejected under 35 USC 112, as "the amended portion of the independent claims is ambiguous," according to the Final Office Action. To conclude the prosecution of the application, independent claims are amended without conceding any points or waiving any arguments in the Final Office Action. It is believed that independent claims now fully comply with 35 USC 112, and withdrawal of the rejection is respectfully requested.

Further according to the Final Office Action, claims 1-6, 10, 12, 14 and 16-22 were rejected under 35 USC 103 as being unpatentable over US Patent 5,404,580 (Simpson) in view of European Patent Application EP0850188 (Kraft). Moreover, claim 15 was rejected under 35 USC 103 as being unpatentable over Simpson. In addition, claims 7-9 and 13 were rejected under 35 USC 103 as being unpatentable over Simpson in view of the instant application. In response, Applicant respectfully traverses all rejections for the following reasons.

Clearly, Simpson fails to teach or suggest Applicant's feature of "the physical data carrier [being] incorporated in an accessory usable with the interactive electronic device," as recited in Applicant's claim 1. It is believed that the Examiner concedes this point and relies on Kraft to supplement Simpson. This reliance on Kraft, however, is factually and legally in error.

Kraft merely discloses a portable phone, having a controller and storage, for setting and storing phone settings, respectively. The controller is associated with a sensor for

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sensing a control parameter, and it automatically selects a phone mode in response to the sensed control parameter. According to Kraft, a car kit does not carry any data or information, as Applicant was unable to find such disclosure after thorough review of the Kraft reference. In contrast, Applicant's physical data carrier contains information, which is read by reading means and interpreted by processing means. Hence, any analogy between Kraft's car kit and Applicant's physical data carrier is factually incorrect. If the Examiner disagrees, he is respectfully requested to specifically point out those portions in Kraft allegedly disclosing a car kit carrying information for least one operational setting of an interactive electronic device, as in Applicant's claimed invention.

In addition, the combination of Simpson and Kraft is untenable from a legal perspective. As illustrated in FIG. 2 of the patent, Simpson is directed to a radiotelephone 102, which comprises a main unit 104 having a handle 106 an antenna 108 and a handset 110 coupled to the main unit 104 by a cable 112. The main unit 104 is also provided with a receiving slot 118 for receiving a smart card 120 in order that the radiotelephone may operate. The smart card stores radio function selecting information and a radio user validation code. The radio communicates with a radio communications system in response to the code for enabling the radio to receive incoming calls at least. Radio function control means activate a subset of the call functions within the set of call functions in response to the radio function selecting information stored in the smart card.

It is not clear as to what would motivate Simpson to combine his radiotelephone with the Kraft's car kit – all the necessary information to operate the phone is received from the smart card in Simpson, and nothing is achieved or gained from the Kraft's car kit in Simpson's invention.

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

If the above-identified criteria are not met, then the cited references fail to render obvious the claimed invention, and the claimed invention is distinguishable over the cited references.

It is respectfully submitted that the combination of Simpson and Kraft fails to meet any one of the above three criteria, as set forth in MPEP § 706.02(j). If the Examiner disagrees, he is respectfully requested to elaborate on the above.

Moreover, Simpson fails to teach or suggest the feature of "... such that the physical data carrier communicates with the interactive electronic device over a wireless medium," as recited in Applicant's claim 1. As pointed out above, a smart card is inserted into a slot in the phone according to Simpson. Kraft is not even pertinent to this feature of Applicant's claimed invention. Thus, the combination of Simpson and Kraft is deficient. It is, therefore, respectfully submitted that Simpson and Kraft, whether alone or in combination, do not render obvious Applicant's claim 1. Withdrawal of the rejection is respectfully requested.

Claims 2-6, 12, 14 and 16-18 depend, either directly or indirectly, from independent claim 1 and inherit all of its features. Since claim 1 is allowable as discussed above, at least for those reasons claims 2-6, 12, 14 and 16-18 are also allowable by virtue of their dependency. Withdrawal of the rejections of claims 2-6, 12, 14 and 16-18 is, therefore, earnestly solicited.

With respect to claim 21 that contains the above-discussed features of claim 1, Applicant essentially repeats the above arguments to submit that it is not rendered obvious by Simpson and Kraft. Withdrawal of the rejections is, therefore, respectfully requested.

Claim 22 depends from independent claim 21 and inherits all of its features. Since claim 21 is allowable as discussed above, at least for those reasons claim 22 is also allowable by virtue of its dependency. Withdrawal of the rejections of claim 22 is, therefore, earnestly solicited.

With respect to claim 15, it is respectfully submitted that it is also allowable over Simpson by virtue of its dependency from claim 1. Withdrawal of the rejection is respectfully requested.

Claims 7-9 and 13 depend, either directly or indirectly, from independent claim 1 and inherit all of its features. Since claim 1 is allowable as discussed above, at least for those reasons claims 7-9 and 13 are also allowable by virtue of their dependency. Withdrawal of the rejections of claims 7-9 and 13 is, therefore, earnestly solicited.

This amendment places the instant application in condition for immediate allowance, and such action is respectfully requested. No additional fee is believed to be due. However, if needed, please charge any additional fees associated with this application to Deposit Account No. 14-1270.

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April 17, 2006

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